2. *Notice of the amendment to Tennessee operational agreement.* In accordance with § 1954.3(f)(3) of this chapter, notice is hereby given that an agreement effective April 14, 1976, and incorporated as part of the Tennessee plan has been entered into between Eugene Fowinkle, Commisioner of the Tennessee Department of Public Health, James G. Neeley, Commissioner of the Tennessee Department of Labor, and Donald E. Mackenzie, Regional Administrator for Occupational Safety and Health, the U.S. Department of Labor, to amend the agreement that became effective November 11, 1974, in that Federal responsibility under the Act will be exercised with regard to working conditions in railroads, except as to working conditions as to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. This Federal responsibility will continue only until such time as the State is able to reassume jurisdiction in this area.

The agreement is subject to revision or termination by the Assistant Secretary of Labor for Occupational Safety and Health upon substantial failure by the State to comply with any of its provisions, or when the results of evaluation under 29 CFR Part 1954 reveal that State operations covered by the agreement fail in a substantial manner to be at least as effective as the Federal program.

In accordance with this agreement and effective as of April 14, 1976, Subpart P of 29 CFR Part 1952 is hereby amended as set forth below.

Section 1952.222 is amended to read as follows:

§ 1952.222 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Tennessee, effective November 11, 1974, and as amended April 14, 1976, and based on a determination that Tennessee is operational in issues covered by the Tennessee occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under Part 1910 and Part 1926 of this chapter. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11 (c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as Tennessee shall have adopted equivalent standards in accordance with Subpart C of Part 1953 of this chapter; Standards in §§ 1910.13 through 1910.16 of this chapter which issues have been specifically excluded from coverage under the Tennessee plan; working conditions in railroads, except working conditions as to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health; and investigations and inspections for the purpose of the evaluation of the Tennessee plan under section 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Tennessee.

(Secs. 8(g)(2), 18, 84 Stat. 1600, 1608 (29 U.S.C. 657(g)(2), 667).)

Signed at Washington, D.C., this 3rd day of August 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-23732 Filed 8-12-76;8:45 am]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

PART 581—PERSONNEL REVIEW BOARDS

Army Discharge Review Board; Procedural Rules

The Army Discharge Review Board has revised its rules of procedure which presently appear in 32 CFR 581.2. The revised rules were effective on April 30, 1976 and will apply to all cases pending before the Army Discharge Review Board as well as to new appeals. These rules will revise the present coverage in 32 CFR 581.2.

Since the rules specify Agency procedure to be followed, notice of proposed rule making and the procedures thereto are not necessary.

Dated: July 29, 1976.

WILLIAM E. WEBER,
Colonel, Infantry, President, Army Discharge Review Board.

In consideration of the foregoing and for the reasons given by the authority of section 301, title I, act of 22 June 1944 (10 U.S.C. 1553), 32 CFR 581.2 is revised as follows:

§ 581.2 Army Discharge Review Board.

(a) Constitution, applicability, purpose, and jurisdiction.

(1) The Army Discharge Review Board (ADRB), an entity which may consist of such number of panels as the Secretary of the Army may deem necessary, is an administrative agency created within the Department of the Army, under authority of section 301, title I, act of June 22, 1944 (10 U.S.C. 1553) to review on its own motion or upon application by or on behalf of the individual concerned, the discharge or dismissal of former members of the Army. The scope of the inquiry of the ADRB will be to determine whether the discharge received was equitably and properly given. When the ADRB determines in an individual case that the discharge was not equitably and properly given, it is authorized, in the manner herein prescribed, to direct The Adjutant General to take appropriate action, that is, to change, correct, or modify any discharge or dismissal, and to issue a new discharge, such direction being subject to review and modification by the Secretary of the Army. Such remedial action is intended primarily to insure that no discharged or dismissed former member of the Army will be deprived unjustly of any benefit provided by law for former members of the military service by reason of a type of discharge or dismissal inequitably or improperly given.

(2) The ADRB will not review a discharge or dismissal given by reason of the sentence of general court-martial.

(3) The ADRB has no authority to revoke any discharge or dismissal, to reinstate any person in the military service subsequent to his discharge or dismissal, or to recall any person to active duty.

(b) Definitions. (1) ADRB. An administrative agency (entity) designated by the Secretary of the Army consisting of one or more panels.

(2) ADRB Panel. A panel consisting of five officers for the purpose of hearing a discharge review appeal. Panels are located at Washington, D.C. and at such field installations as designated by the Secretary of the Army.

(3) ADRB Field Panel. A panel located at fixed field installations as designated by the Secretary of the Army.

(4) ADRB Traveling Panel. A panel designated to hear a discharge review appeal at locations other than Washington, D.C. and the fixed field installations.

(5) ADRB Hearing Examiner. An experienced ADRB panel member designated to conduct a video tape hearing.

(6) President of the ADRB. An officer designated by the Secretary of the Army to control operations of the ADRB and its panels. Only the president of the ADRB will execute action under this regulation in the name of the Secretary. In the event of absence or inconvenience of the president of the ADRB, the next senior line officer member on the ADRB in Washington, D.C., will serve as acting president for all purposes.

(7) Presiding Officer. The senior line officer member of any ADRB panel convened by the president of the ADRB for the purpose of conducting hearings.

(8) Secretary-Recorder of the ADRB. An officer designated by the president of the ADRB performing the functions as directed, and with the authority to administer oaths in accordance with Article 136, Uniform Code of Military Justice.

(9) Alternate Secretary-Recorder. An officer designated by the president of the ADRB to exercise certain secretary-recorder functions for a panel of the ADRB.

(10) Legal Advisor of the ADRB. An officer of the Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(11) Medical Consultant of the ADRB. An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating the ADRB functions.

(12) Members of the ADRB. Officers assigned to or, when authorized by the Secretary of the Army upon request by the president of the ADRB, detailed by installation commanders to hear discharge review cases as scheduled by the president of the ADRB.

(13) Applicant. An ex-service member of the Army who, in accordance with statutory and regulatory provisions, requests to have an appeal heard by the ADRB.

(14) Counsel. Any individual designated by the applicant to represent him in his appeal before the ADRB or an accredited representative of an organization recognized by the Administration for Veterans Affairs, chapter 39, United States Code. Under no circumstances will counsel, compensation for counsel, or travel expenses for applicant or counsel be provided by agencies of the United States Army.

(15) Video Tape Hearing. A hearing conducted by an ADRB Hearing Examiner at which an applicant is given the opportunity to present his appeal to the Hearing Examiner, with the entire presentation, including cross-examination by the Hearing Examiner recorded on video tape. This video tape presentation is later displayed to an ADRB panel designated by the president of the ADRB. Video tape hearings shall be conducted only at the request of the applicant and with the concurrence of the president of the ADRB.

(c) Composition. (1) Members. (i) As designated by the Secretary of the Army, the ADRB will have one or more panels, each consisting of five officers with the senior line officer member of each panel acting as presiding officer.

(ii) The president of the ADRB is designated by the Secretary of the Army and is responsible for the operation of the ADRB and its panels. He will prescribe the operating procedures of the panels and schedule hearings by the panels.

(iii) For the purpose of maintaining the number of members needed to conduct hearings, additional members may be appointed to the ADRB by the Secretary or be detailed to a panel by an installation commander when requested by the president of the ADRB. In any proceeding a member who has not been present at prior sessions of a panel may participate thereafter if that member has read or has read to him the record of proceedings held during his absence or prior to his participation.

(2) Secretary-Recorder. (i) The secretary-recorder and designated alternate secretary-recorders shall have authority to administer oaths as granted in Article 136. Uniform Code of Military Justice, and shall perform such other duties as requested by the president of the ADRB. The secretary-recorder or alternate secretary-recorders will not serve as counsel for the applicant nor for the Government.

(ii) The alternate secretary-recorders of panels tenanted at installations outside the Washington, D.C., area shall, as directed by the president of the ADRB, cordinate the activities of panels conducting hearings at such installations and shall be suported by installation commanders as established by separate directive. The alternate secretary-recorders will report directly to the president of the ADRB.

(d) Administrative personnel. Such administrative personnel as are required for the proper functioning of the ADRB and its panels will be furnished by the Secretary of the Army or by installation commanders when so directed by the Secretary of the Army.

(e) Application for review. (1) The applicant will submit a written request for a review by the ADRB and such other statements or affidavits as he desires to present.

(2) The request will be made on a DD Form 293 (Application for Review of Discharge or Separation from the Armed Forces of the United States) which may be requisitioned through normal publications supply channels. When an individual is requested to complete DD Form 293, he will be given a copy of DD Form 293—Privacy Act Statement (fig. 1). DD Form 293—Privacy Act Statement will be reproduced on 8 x 10½ inch paper. The request will state in brief the full name, service number and/or social security number, and grade and organization or assignment at date of discharge of the period whose discharge or dismissal is in question; the date and place of discharge; the type and nature of the discharge or dismissal; the basis of the claim for review; what corrective action is desired of the ADRB; whether the applicant desires to be represented by counsel before a panel of the ADRB and, if so, the name and address of counsel so designated; and the address to which all correspondence in connection with the review is to be sent.

(3) The request will be signed by the former officer or enlisted man or woman or, if deceased, by the surviving spouse, next-of-kin, or legal representative. If former member is deceased, proof of death must accompany the request. If the applicant is mentally incompetent, his or her spouse, next-of-kin, or legal guardian will sign the request. Such requests must be accompanied by legal proof of the mental incompetency.

(4) No application for review will be granted unless received by the Department of the Army within 15 years after the date of the discharge or dismissal.

(5) The request for review will be forwarded to:

Commander, US Army Reserve Components Personnel & Administration Center, 9700 Page Boulevard, St. Louis, MO 63132.

(6) Upon receipt of an application, The Adjutant General will verify that the provisions of paragraphs (e) (2) and (3) of this section have been met. The Adjutant General will then assemble the originals or certified copies of all available Department of the Army records pertaining to the former service man or woman named in such application. Such records, together with the application and any supporting documents, will be transmitted to the president of the ADRB, Washington, D.C.

(f) Convening of a panel of the ADRB. (1) Panels located in Washington, D.C., will be convened at the call of the president of the ADRB. Panels designated to conduct hearings in other locations will convene at the time and place indicated by the president of the ADRB to consider cases directed to the panels by him in accordance with established procedures. Presiding officers may, when authorized by the president of the ADRB, modify the time and place of scheduled hearings, and will recess and adjourn the panels in accordance with established procedures.

(2) Panels of the ADRB will assemble in open or closed session for the consideration and determination of cases presented to them. Cases in which no request for either a personal or video tape hearing is made by the applicants will be considered only by a panel in Washington, D.C., in closed session on the basis of all documentary evidence presented to the ADRB, including any briefs submitted by the applicant. Cases in which the applicant has elected to present his appeal by means of a video tape hearing will be considered only by a panel in Washington, D.C., in closed session on the basis of the video tape and all documentary evidence presented to the ADRB, including any briefs submitted by the applicant.

(g) Hearings. (1) General. (i) An applicant, upon request, is entitled by law to appear before a panel of the ADRB in open session, either in person or by counsel of his selection. As used in this regulation, the term "counsel" will be construed to include members of the Federal bar in good standing, the bar of any State in good standing, accredited representatives of veterans' organizations recognized by the Veterans Administration under 72 Stat. 1238; 38 U.S.C. 3402 and such other persons not barred by law, regulations, or customs who, in the opinion of the panel, are considered to be competent to present equitably and comprehensively the claim of the applicant for review. In no case will the expenses or compensation of counsel for the applicant be paid for by the Government.

(ii) An applicant may, upon request and for his own convenience, be offered an opportunity to appear by video tape hearing. The use of such video tape hearings is encouraged, in appropriate cases, since it does not require the applicant and his counsel to travel to the panel location. Video tape hearings will be conducted as directed by the president of the ADRB.

(iii) In every case in which either a personal or video tape hearing is requested, the ADRB will transmit to the applicant and to designated counsel for the applicant, if any, a written notice

stating the time and place of hearing. The record will contain evidence that written notice to the applicant and his counsel, if any, has been given.

(iv) An applicant who requests either a personal or video tape hearing and who, after being duly advised of the time and place of hearing, fails to appear without previous satisfactory arrangement with the ADRB will be considered as having waived his right of appearance. In such cases, the applicant's case will be presented only to a panel in Washington, D.C., and will be reviewed on the evidence contained in his military record or any other evidence which may have been provided by the applicant.

(2) Conduct of hearing. (i) Conduct of hearings will be in accordance with this regulation. Applicant and/or his counsel may have access to the records considered by the panel in the case except such classified material the disclosure of which would jeopardize defense interests of the United States. When necessary to acquaint the applicant with the substance of a document classified by intelligence agencies, the Assistant Chief of Staff for Intelligence, Department of the Army, on the request of the ADRB will prepare a summary of, or extract from the document, deleting all references to sources of information and other matter the disclosure of which, in his opinion, would be detrimental to the defense interests of the United States.

(ii) In the conduct of its inquiries, the ADRB and its panels will not be limited by the restrictions of common law rules of evidence.

(iii) In all cases in which the applicant appears in person or by video tape hearing, or in which counsel makes an appearance for the applicant, the president of the ADRB shall cause a sufficient record of the proceedings and testimony to be prepared.

(3) Witnesses. The testimony of witnesses may be presented either in person or by affidavits. If a witness testifies in person he will be subject to examination by members of the panel.

(4) Continuances. A panel may continue a hearing on its own motion. A request for continuance by or on behalf of the applicant may be granted at the discretion of the panel, if a continuance appears necessary to insure a full and fair hearing.

(5) Withdrawal. An applicant may withdraw his request for review at any time without prejudice.

(6) Expenses. Expenses incurred by the applicant, his witnesses, or in the procurement of their testimony, whether in person or by affidavit, will not be paid by the Government.

(7) Challenges. Challenges shall be for cause only and will be ruled on by the presiding officer, or the next senior line officer member if the presiding officer is challenged. Applicants who elect to appear by video tape hearing will be considered to have waived their right to challenges for cause.

(h) Finding and conclusion of a panel of the ADRB. (1) The panel will make a finding in closed session in each case as to whether the applicant was or was not properly discharged.

(2) On the basis of its finding in each case the panel, in closed session, will prepare a conclusion as to whether corrective action will be taken by the Department of the Army with respect to the discharge under consideration. No corrective action which exceeds the jurisdiction of the ADRB, as defined in paragraph (a), will be taken.

(3) The finding and conclusion of a majority of the panel will constitute the finding and conclusion of the panel.

(4) When in the judgment of the president of the ADRB, the finding and/or conclusion of a Field Panel of the ADRB may be contrary to law, regulation or policy, or may be inequitable or not supported by the evidence in the record of hearing, he will cause one of the following actions to be taken:

(i) Return the case to the Field Panel for a review and submission of detailed rationale.

(ii) Submit the case without comment to a Review Panel consisting of five officers in the grade of 0–6. This Review Panel will review the case and take one of the following actions:

(A) When the Review Panel determines that the Field Panel's finding and conclusion is contrary to law, regulation or policy, or is not supported by the evidence, the Review Panel shall submit an advisory opinion and rationale, and, by majority vote, shall submit a recommended finding and conclusion.

(B) When the Review Panel determines that the Field Panel's finding and conclusion was unanimous and is not contrary to law, regulation or policy, and is supported by the evidence, the Review Panel shall submit only an advisory opinion and rationale, including its judgment as to an equitable resolution.

(C) When the Review Panel determines that the Field Panel's finding and conclusion was not unanimous (whether a minority report was submitted or not) and is not contrary to law, regulation or policy, and is supported by the evidence, the Review panel shall submit an advisory opinion and rationale, including its judgment as to an equitable resolution, and, by unanimous vote, may submit a recommended finding and conclusion.

(iii) Upon receipt of the Review Panel's advisory opinion and rationale, and recommendations, the president of the ADRB may take action to approve or reject the Field Panel's finding and conclusion and, if rejected, substitute therefore the Review Panel's recommended finding and conclusion. In any case in which the Field Panel's finding and conclusion is not contrary to law, regulation or policy, and is supported by the evidence, and in which a minority report was submitted but the Review Panel did not, by unanimous vote, submit a recommended finding and conclusion, the complete case with the minority report and majority comments, together with the Review Panel's advisory opinion and rationale, shall be submitted by the president of the ADRB to the Office of the Secretary of the Army for final resolution.

(i) Minority reports. In case of a disagreement between members of a panel, a minority report may be submitted. The reasons for the minority report and majority comments will be submitted to the president of the ADRB. Minority reports submitted by Field Panels will be handled in accordance with paragraph (h)(4) of this section. Whenever a minority report is submitted by other than a Field Panel, the complete case with the minority report and majority comments shall be submitted by the president of the ADRB to the Office of the Secretary of the Army for final resolution.

(j) Directive to The Adjutant General. Except in minority report cases submitted to the Office of the Secretary of the Army for final resolution, the president of the ADRB will, in the name of the Secretary of the Army, issue a directive to The Adjutant General specifying the action to be taken as a result of the ADRB's review of discharge or dismissal of former members of the US Army. Presiding officers, other than the president of the ADRB, will not take the foregoing action. They will return the completed case to the president of the ADRB for final action.

(k) Record of proceedings. (1) When the proceedings in any case have been concluded, the secretary-recorder with the assistance of alternate secretary-recorders will prepare a complete record thereof. Such record will include the application for review, a record of the proceedings and testimony, if any, affidavits, papers, and documents considered by the ADRB, all briefs and written arguments filed in the case; the finding and conclusion of the panel of the ADRB; the directive to The Adjutant General, any minority report prepared by dissenting members of the panel; and all other papers and documents necessary to reflect a true and complete history of the proceedings. The record so prepared will be signed by the president of the ADRB and authenticated by the secretary-recorder as being true and complete. In the event of the absence or incapacity of the secretary-recorder, the record may be authenticated by a designated alternate secretary-recorder.

(2) Release of information from such records will be in accordance with AR 340–17 and 340–21.

(l) Transmittal of records and action by The Adjutant General. Designated alternate secretary-recorders will forward cases heard by their panels, and as approved by the presiding officers, to the president of the ADRB for final disposition. Except in minority report cases submitted to the Office of the Secretary of the Army for final resolution, the record of the proceedings in each case will be transmitted by the secretary-recorder to The Adjutant General for appropriate Department of the Army action to carry out the directions of the ADRB. The Adjutant General will perform such administrative acts as may be necessary, and thereafter will notify the applicant and his counsel, if any, of the action taken. Written notice specifying the action taken and the date thereof will be

transmitted by The Adjutant General to the president of the ADRB to be filed as a part of the records of the ADRB pertaining to each case. The Adjutant General, upon written request from the applicant, his guardian, or legal representative, will furnish a copy of the directive to the Secretary of the Army, and a copy of the record of proceedings and testimony, if any, provided that such record of proceedings and testimony has been reduced to written form. If it should appear that furnishing a copy of the record of proceedings and testimony would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant.

(m) Consideration initiated by the ADRB. The president of the ADRB may, at any time, direct consideration of a case which appears, on the face of the record, likely to result in a decision favorable to the former member without the knowledge or presence of the former member. If, upon consideration by a panel, such a case does not result in a decision favorable to such member, it will be returned to the files with no formal action recorded and will be considered without prejudice if and when an appeal is made by the former member. If such consideration results in a decision favorable to the former member. The Adjutant General will be directed to notify the member at his last known address. Only the president of the ADRB may schedule the hearing of such cases.

(n) Rehearings. When a panel has formally considered the case of an applicant and its decision has been approved in the name of the Secretary of the Army, the ADRB will not grant a rehearing unless the basis of the request indicates material evidence, not available at the time of the original hearing, which will likely result in a decision contrary to that reached at the original hearing. The president of the ADRB will make the final determination pertaining to authorization of rehearing.

(o) Changes in procedure of the ADRB. The ADRB may initiate recommendation for such changes in procedures as established herein as may be deemed necessary for the proper functioning of the ADRB. Such changes will be subject to the approval of the Secretary of the Army. Panel presiding officers will submit each recommendation to the president of the ADRB.

(p) Army-Navy-Air Force coordination. Periodic liaison will be conducted with similar boards of the Navy and Air Force to exchange ideas and to discuss common problems.

(q) Applications. This regulation applies to the USAR and to the NG concerning those records of former members of the NG maintained by the Federal Government.

[FR Doc.76-23670 Filed 8-12-76;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 4—SCHEDULE FOR RATING DISABILITIES

Extension of Convalescent Rating Periods

On page 27086 of the FEDERAL REGISTER of July 1, 1976, there was published a notice of proposed regulatory development to amend Part 4 of Title 38, Code of Federal Regulations to extend the convalescent rating periods provided under §§ 4.29 and 4.30 and to make several editorial changes.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

Effective dates: An amendment to Appendix A, Table of Amendments and Effective Dates since 1946 is added to include effective dates. The effective date is August 9, 1976.

Approved: August 9, 1976.

R. L. ROUDEBUSH,
Administrator.

1. In § 4.29, paragraphs (a), (c) and (e) are revised, a new paragraph (f) is added and the present paragraph (f) is redesignated (g) so that paragraphs (a), (c), (e), (f) and (g) read as follows:

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to the provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Veterans Administration or an approved hospital for a period in excess of 21 days or hospital observation at Veterans Administration expense for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e) and (f) of this section, this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability or effective the last day of the month following release to non-bed care. A third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to § 3.105(e) of this chapter.

* * * * *

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under the regular provisions of the rating schedule, and consideration will be given the propriety of such a rating in all instances and to the propriety of its continuance after discharge. Particular attention, with a view to proper rating under the rating schedule, is to be given to the claims of veterans discharged from hospital, regardless of length of hospitalization, with indications on the final summary of expected confinement to bed or house, or to inability to work with requirement of frequent care of physician or nurse at home.

* * * * *

(e) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (a) of this section.

(f) Extension of periods of 1, 2 or 3 months beyond the initial 3 months may be made upon approval of the Adjudication Officer.

(g) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation and Pension Service, under § 3.321(b) of this chapter.

2. Section 4.30 is revised to read as follows:

§ 4.30 Convalescent ratings.

(a) Subject to Veterans Administration regulations governing effective dates for increased benefits, where the report at hospital discharge indicates entitlement under paragraph (a) (1), (2) or (3) of this section, a total rating (100 percent) will be granted following hospital discharge (regular discharge or release to non-bed care), effective from the date of hospital admission and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge. These total ratings will be granted if the hospital treatment of the service-connected disability resulted in

(1) Surgery necessitating posthospital convalescence. The initial grant of a total rating will be limited to 1 month, with one or two extensions of periods of 1 month each in exceptional cases.

(2) Surgery with severe postoperative residuals shown at hospital discharge, such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). Initial grants may be for 1, 2, or 3 months.

(3) Immobilization by cast, without surgery, of one major joint or more shown at hospital discharge or performed on an outpatient basis. Initial grants may be for 1, 2, or 3 months.

A reduction in the total rating will not be subject to § 3.105(e) of this chapter.

The total rating will be followed by an open rating reflecting the appropriate schedular evaluation; where the evidence is inadequate to assign the schedular evaluation, a physical examination will be scheduled prior to the end of the total rating period.

(b) A total rating under this section will require full justification on the rating sheet and may be extended as follows:

(1) Extensions of 1, 2 or 3 months beyond the initial 3 months may be made under paragraph (a) (1), (2) or (3) of this section.

(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a) (2) or (3) of this section upon approval of the Adjudication Officer.

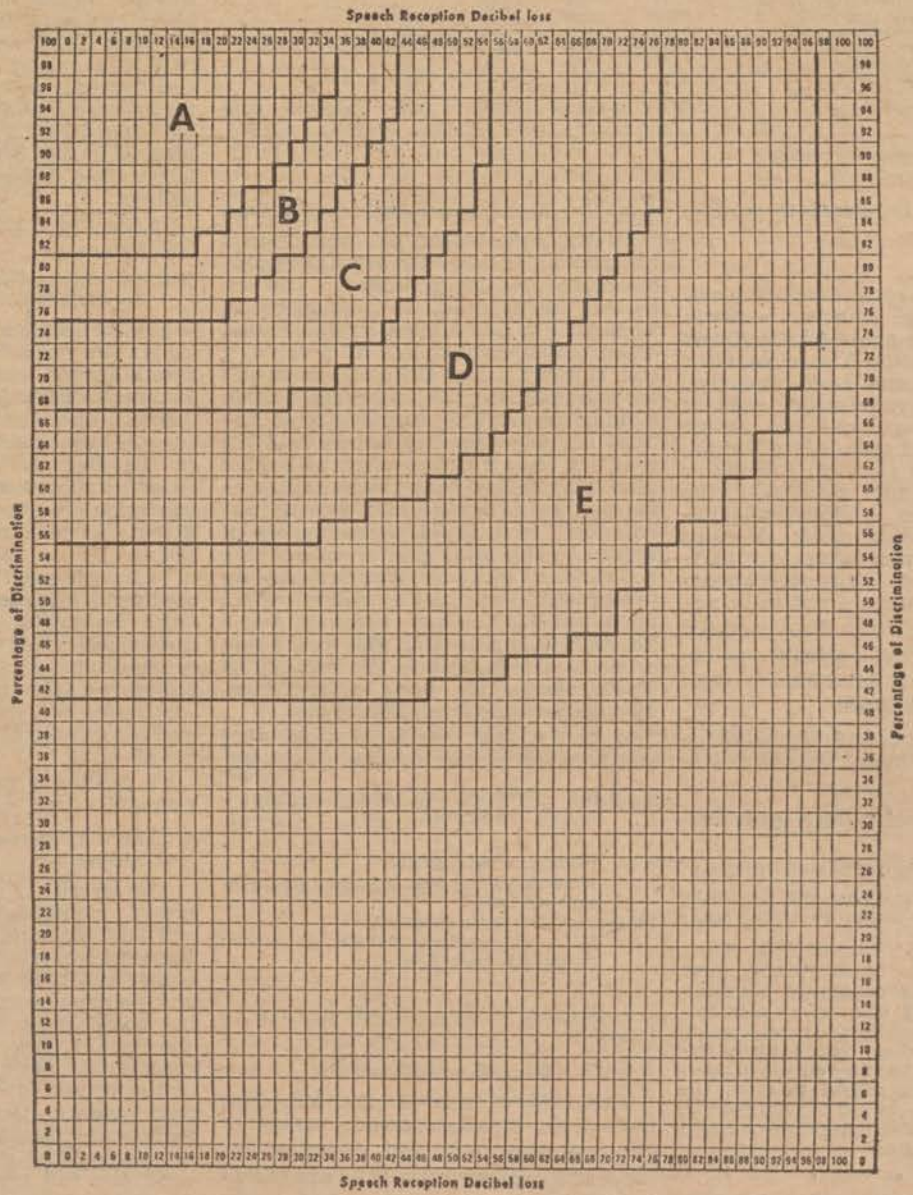
3. Section 4.83 is revised to read as follows:

§ 4.83 Ratings at scheduled steps and distances.

In applying the ratings for impairment of visual acuity, a person not having the ability to read at any one of the scheduled steps or distances, but reading at the next scheduled step or distance, is to be rated as reading at this latter step or distance. That is, a person who can read at 20/100 but who cannot read at 20/70 should be rated as seeing at 20/100.

4. Immediately following § 4.87, Tables IV and V are revised to read as follows:

TABLE IV



(This chart showing the literal designation of hearing loss is based on the ISO (ANSI) norm.) [ ]

TABLE V.—*Ratings for hearing impairment (with diagnostic code)*

Hearing in better ear			Hearing in poorer ear					
			Conversational voice in feet					
			0 ft	1 to 4 ft	5 to 7 ft	8 to 9 ft	10 to 14 ft	15 to 40 ft
			Pure tone audiometry decibel loss					
Conversational	Pure tone audiometry average decibel loss at 3 frequencies: 500, 1,000 and 2,000 (either air conduction or GSR)	Speech reception impairment literal designation	Average 100 or more	Average not more than 99; none more than 105	Average not more than 79; none more than 90	Average not more than 57; none more than 70	Average not more than 45; none more than 55	Average not more than 37; none more than 45
			Speech reception impairment literal designation					
			F	E	D	C	B	A
0 ft	Average 100 or more	F	[1] 80 (6277)					
1 to 4 ft	Average not more than 99; none more than 105.	E	60 (6278)	60 (6283)				
5 to 7 ft	Average not more than 79; none more than 90.	D	40 (6279)	40 (6284)	40 (6288)			
8 to 9 ft	Average not more than 57; none more than 70.	C	30 (6280)	30 (6285)	20 (6289)	20 (6292)		
10 to 14 ft	Average not more than 45; none more than 55.	B	20 (6281)	20 (6286)	20 (6290)	10 (6293)	10 (6295)	
15 to 40 ft	Average not more than 37; none more than 45.	A	10 (6282)	10 (6287)	10 (6291)	0 (6294)	0 (6296)	0 (6297)

[1] Entitled to special monthly compensation.

This chart is based upon ISO (ANSI) norm.

5. Section 4.115 is revised to read as follows:

§ 4.115 Nephritis.

Albuminuria alone is not nephritis, nor will the presence of transient albumin and casts following acute febrile illness be taken as nephritis. The glomerular type of nephritis is usually preceded by or associated with severe infectious disease; the onset is sudden, and the course marked by red blood cells, salt retention, and edema; it may clear up entirely or progress to a chronic condition. The nephrosclerotic type, originating in hypertension or arteriosclerosis, develops slowly, with minimum laboratory findings, and is associated with natural progress. Separate ratings are not to be assigned for disability from disease of the heart and any form of nephritis, on account of the close interrelationships of cardiovascular disabilities.

6. In § 4.115a, the note following diagnostic code 7500 is revised to read as follows:

§ 4.115a Schedule of ratings—genitourinary system.

DISEASES OF THE GENITOURINARY SYSTEM

7500 Kidney, removal of one, with nephritis, infection, or pathology of the other

* * * * *

NOTE.—The absence of one kidney prior to enlistment or the congenital nonfunctioning of one kidney will require a deduction of 30 percent from the 60 percent rating under Code 7500; when, under these circumstances, a total disability on the basis of unemployability is considered to exist, the claims folder will be referred to the Director, Compensation and Pension Service, under § 3.321(b) of this chapter.

* * * * *

7. Section 4.116 is revised to read as follows:

§ 4.116 Rating gynecological conditions.

In rating disability from gynecological conditions the following will not be considered as ratable conditions: (a) the natural menopause, (b) amenorrhea, when this is based upon developmental defect or abnormality, and (c) pregnancy and childbirth and their incidents, except surgical complications under certain circumstances. The surgical complications of pregnancy will not be held the result of service except when additional disability resulted from treatment therein or they are otherwise directly attributable to unusual circumstances of service. Congenital malformations are not ratable conditions. New growths are to be rated in accordance with the effect upon parts or organs involved whose function is impaired or whose resection or excision is indicated. The excision of uterus, ovaries, etc., prior to the natural menopause is considered disabling.

8. In § 4.116a, diagnostic codes 7624 and 7625 are revised to read as follows:

§ 4.116a Schedule of ratings—gynecological conditions.

* * * * *

7624 Fistula, rectovaginal
Rate as ano, fistula in, under diagnostic code 7335.

7625 Fistula, urethrovaginal
Rate as urethra, fistula of, under diagnostic code 7519.

* * * * *

9. Section 4.125 is revised to read as follows:

§ 4.125 General considerations.

The field of mental disorders represents the greatest possible variety of etiology, chronicity and disabling effects, and requires differential consideration in these respects. These sections under mental disorders are concerned with the rating of psychiatric conditions and specifically psychotic, psychoneurotic and psychophysiologic disorders, as well as mental disorders accompanying organic brain disease. Advances in modern psychiatry during and since World War II have been rapid and profound and have extended to the entire medical profession a better understanding of and deeper insight into the etiological factors, psychodynamics, and psychopathological changes which occur in mental disease and emotional disturbances. The psychiatric nomenclature employed is based upon the Diagnostic and Statistical Manual of Mental Disorders, 1968 Edition, American Psychiatric Association. This nomenclature has been adopted by the Department of Medicine and Surgery of the Veterans Administration. It limits itself to the classification of disturbances of mental functioning. To comply with the fundamental requirements for rating psychiatric conditions, it is imperative that rating personnel familiarize themselves thoroughly with this manual (American Psychiatric Association Manual, 1968 Edition) which will be hereinafter referred to as the APA manual.

10. Section 4.127 is revised to read as follows:

§ 4.127 Mental deficiency and personality disorders.

Mental deficiency and personality disorders will not be considered as disabilities under the terms of the schedule. Attention is directed to the outline of personality disorders in the APA manual. Formal psychometric tests are essential in the diagnosis of mental deficiency. Brief emotional outbursts or periods of confusion are not unusual in mental deficiency or personality disorders and are not acceptable as the basis for a diagnosis of psychotic reaction. However, properly diagnosed superimposed psychotic reactions developing after enlistment, i.e., mental deficiency with psychotic reaction or personality disorder with psychotic reaction, are to be considered as disabilities analogous to, and ratable as, schizophrenic reaction, unless otherwise diagnosed.

11. Section 4.130 is revised to read as follows:

§ 4.130 Evaluation of psychiatric disability.

The severity of disability is based upon actual symptomatology, as it affects social and industrial adaptability. Two of the most important determinants of disability are time lost from gainful work and decrease in work efficiency. The rating board must not underevaluate the emotionally sick veteran with a good work record, nor must it overevaluate his or her condition on the basis of a poor work record not supported by the psychiatric disability picture. It is for this reason that great emphasis is placed upon the full report of the examiner, descriptive of actual symptomatology. The record of the history and complaints

is only preliminary to the examination. The objective findings and the examiner's analysis of the symptomatology are the essentials. The examiner's classification of the disease as "mild," "moderate," or "severe" is not determinative of the degree of disability, but the report and the analysis of the symptomatology and the full consideration of the whole history by the rating agency will be. In evaluating disability from psychotic reactions it is necessary to consider, in addition to present symptomatology or its absence, the frequency, severity, and duration of previous psychotic periods, and the veteran's capacity for adjustment during periods of remission. Repeated psychotic periods, without long remissions, may be expected to have a sustained effect upon employability until elapsed time in good remission and with good capacity for adjustment establishes the contrary. Ratings are to be assigned which represent the impairment of social and industrial adaptability based on all of the evidence of record. Evidence of material improvement in psychotic reactions disclosed by field examination or social survey should be utilized in determinations of competency, but the fact will be borne in mind that a person who has regained competency may still be unemployable, depending upon the level of his or her disability as shown by recent examinations and other evidence of record.

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

1. Section 4.29 is revised to read as follows:
4.29 Introductory portion preceding paragraph (a): March 1, 1963.

Paragraph (a) "first day of continuous hospitalization": April 8, 1959.
Paragraph (a) "terminated last day of month": December 1, 1962.
Paragraph (a) penultimate sentence: November 13, 1970.
Paragraph (b): April 8, 1959.
Paragraph (c): August 16, 1948.
Paragraph (d): August 16, 1948.
Paragraph (e): March 1, 1963.
Paragraph (f): August 9, 1976.

NOTE.—Application of this section to psychoneurotic and psychophysiologic disorders effective October 1, 1961.

2. Section 4.30 is revised to read as follows:
4.30 Introductory portion of paragraph (a) preceding subparagraph (1): July 6, 1950.

Paragraph (a) (1): June 9, 1952.
Paragraph (a) (2): June 9, 1952.
Paragraph (a) (3): June 9, 1952. Effective as to outpatient treatment March 10, 1976.
Paragraph (b) (1): March 1, 1963.
Paragraph (b) (2): August 9, 1976.

[FR Doc.76-23476 Filed 8-12-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 599-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

New York State Implementation Plan; Correction

In FR Doc. 76-20979 appearing on pages 29817 and 29818 in the issue for Tuesday, July 20, 1976 make the following changes:

On page 29818 in column 2, the fifth through seventh lines of paragraph (c) (30) should be deleted and replaced with, "§§ 225.2(c) covering three power plants.".

On page 29818 in column 2, the third line of paragraph (c) (31) should read, "§§ 225.2(c) submitted on March".

Dated: August 6, 1976.

GERALD M. HANSLER,
Regional Administrator,
Environmental Protection Agency.

[FR Doc.76-23564 Filed 8-12-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-754]

PART 1—PRACTICE AND PROCEDURE

Format for Briefs

1. Section 1.277 of the rules was recently amended to specify the format for briefs filed with the Commission and to provide that the exceptions and argument shall not exceed 50 double-spaced typewritten pages. (FCC 76-237, April 2, 1976, Docket 20626). To avoid confusion or mistake, it seems desirable to be more specific as to which of the contents of the brief are counted in determining compliance with the 50 page limit. We are therefore adding the following sentence to § 1.277(c): The table of contents and table of citations are not counted in the 50 page limit; however, all other contents of or attachments to the brief are counted.

2. The revised rule is set out in the attached Appendix. Authority for this rule is contained in sections 4(i) and (j) and 303(r) of the Communicatons Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 303(r). Because the amendment involves a matter of procedure, compliance with the prior notice and effective date provisions of 5 U.S.C. 553 is unnecessary.

3. Accordingly, *it is ordered*, effective August 20, 1976, That § 1.277 of the rules and regulations is amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Adopted: August 5, 1976.

Released: August 12, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

In Part 1 of Chapter I of Title 47 of the Code of Federal Regulations, § 1.277 (c) is revised to read as follows:

§ 1.277 Exceptions; oral argument.

* * * * *

(c) Except by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 50 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 50 page limit; however, all other contents of and attachments to the brief are counted.) Within 10 days, or such other time as the Commission may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double-spaced typewritten pages. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission in its discretion will, by order, grant or deny the request for oral argument. Within five days after release of the Commission's order designating an initial decision for oral argument, as provided in paragraph (d) of this section, any party who wishes to participate in oral argument shall file written notice of intention to appear and participate in oral argument; and failure to file written notice shall constitute a waiver of the opportunity to participate.

* * * * *

[FR Doc.76-23683 Filed 8-12-76;8:45 am]

[FCC 76-756]

PART 1—PRACTICE AND PROCEDURE

Length of Pleadings

1. In a recent Report and Order in Docket 20626, we stated that "pleadings in excess of the prescribed length because of appendices and other * * * attachments will be returned without consideration." (58 FCC 2d 865, at para. 36). However, we failed to amend the pertinent provision of the rules (§ 1.48 (a)), which reads as follows:

(a) Affidavits, statements, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading. Other materials submitted with the pleading will be disregarded.

Affidavits and other materials factually supporting a pleading are often required or appropriately submitted for other reasons. It is not our intention that they be counted in determining the length of the pleading. However, other (argumentative) materials, in the form of affidavits or otherwise, will be counted in determining the length of the pleading; and if the length of the pleading, as so computed, is greater than permitted by the rules, the pleading and all attachments will be returned without consideration. Section 1.48(a) is amended herein to reflect this policy.

2. The amended rule is set out in the attached Appendix. Authority for the amendment is contained in sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 303(r). Because the amendment involves a matter of procedure, compliance with the prior notice and effective date provisions of 5 U.S.C. 553 is unnecessary.

3. Accordingly, *it is ordered*, effective August 20, 1976, That § 1.48 of the rules and Regulations is amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1056, filed 47 U.S.C. 184, 603.)

Adopted: August 5, 1976.

Released: August 12, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

In Part 1 of Chapter I of Title 47 of the Code of Federal Regulations, § 1.48(a) is revised to read as follows:

§ 1.48 Length of pleadings.

(a) Affidavits, statements, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading. If other materials are submitted with a pleading, they will be counted in determining its length; and if the length of the pleadings, as so computed, is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration.

* * * * *

[FR Doc.76-23687 Filed 8-12-76;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

[Docket No. 35867]

PART 1307—FREIGHT RATE TARIFFS, CLASSIFICATION OF MOTOR CARRIERS

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATION OF MOTOR COMMON CARRIERS

Revision of Regulations for the Construction, Filing, and Posting of Tariffs of Common Carriers of Property by Motor Vehicle and Tariffs of Certain Common Carriers by Water

Correction

In FR Doc. 76-21147, appearing at page 30590 in the issue of Monday, July 26, 1976 make the following changes to the flush paragraph following § 1310.27(1)(6)(iv) on page 30630:

1. In the sixth line the reference "(A)" should read "(i)".
2. In the eighth line the reference "(B)" should read "(ii)".
3. In the twelfth line the reference "(C)" should read "(iii)".
4. In the fifteenth line the reference "(D)" should read "(iv)".

[Ex Parte No. 277 (Sub No. 3)]

PART 1124—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY RAILROAD PASSENGER SERVICE

Smoking

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 11th day of August, 1976.

Upon consideration of the record in the above-entitled proceeding including the report and order of the Commission entered March 29, 1976, the petition for reconsideration filed June 8, 1976, by the National Railroad Passenger Corporation and the reply to said petition filed July 6, 1976, by Action on Smoking and Health; and

It appearing, that in the said report and order, the Commission issued modifications of the Regulations Governing the Adequacy of Intercity Railroad Passenger Service, 49 CFR 1124.1 through 1124.28; that among other things, the report and order modified the regulations concerning smoking on board passenger trains, required carriers to provide a summary of rights to passengers which shall be printed either on the standard ticket envelope provided to ticket purchasers or on a separate sheet enclosed therein and required all cars to carry first aid kits; and that the National Railroad Passenger Corporation (Amtrak) seeks reconsideration of these regulations;

It further appearing, that the regulations as modified by said report and order prohibit smoking in any dining car; that in its petition Amtrak contends that said prohibition is likely to deter potential customers and may result in passenger resentment to the enforcement of this regulation; that, as asserted in said report and order, we do not believe that such prohibition will cause undue hardship to the smoking passenger in comparison to the discomfort suffered by the non-smoking passenger if the Amtrak proposal was adopted; and that accordingly Amtrak's request concerning dining cars should be denied;

It further appearing, that the regulation adopted by said report and order permitted smoking in a ratio of up to one smoking parlor or dome car for every nonsmoking parlor or dome car in the consist; that in this petition Amtrak states that all of its equipment containing dome space is either a diner, lounge, sleeper or coach car; that Amtrak believes that smoking should be prohibited or permitted in dome space based on the designation of the underlying car; that dome space may well be frequented by persons interested in an enhanced view of the scenery for a lengthy period of time; that if there is only one car in the consist with dome space, permitting smoking may deter nonsmoking passengers from availing themselves of such space; and that Amtrak's proposal concerning dome space should be denied;

It further appearing, that Amtrak asserts in its petition that it does not operate more than one parlor car on any of its trains; that the effect of the regulation concerning parlor cars effectively prohibits smoking by passengers in parlor car accommodations; that me believe, because of the relatively few persons who utilize parlor car accommodations, permitting smoking in such cars would not unduly burden the nonsmoking passenger and would enable smokers to purchase first class accommodations; and that parlor cars should be deleted from regulation 21(b)(3) and inserted in regulation 21(b)(1);

It further appearing, that Amtrak requests that the dissemination of passenger rights be accomplished by posting notices in cars or by publishing them in time tables and that first aid kits be made available only in food service cars;

It further appearing, that Amtrak fails to set forth any substantive arguments for modification of the method of dissemination of the summary of passenger rights and the requirement for first aid kits to be placed in all cars, and, therefore, the request for such modifications should be denied;

It further appearing, that in order to make clear as to what type of food service car regulation 21(b)(2) refers, the words "full service" should be added to that regulation before the words "dining cars";

It further appearing, that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969;

It is ordered, That, except to the extent granted, the petition be, and it is hereby, denied;

It is further ordered, That 49 CFR 1124.21 should be modified to read as follows:

§ 1124.21 Allocation of space for nonsmokers and smokers.

(a) Smoking shall not be permitted on trains except in appointed areas with fire resistant materials and equipped with ventilation systems adequate to exchange air completely in reasonably short periods of time.

(b) On train cars meeting the above requirements, smoking may be permitted as follows:

(1) Smoking may be permitted in private sleeping cars, snack cars, parlor cars, and lounge cars.

(2) Smoking is not permitted in any full service dining car.

(3) Smoking may be permitted in any other car in a ratio of up to one smoking car for every nonsmoking car of its type in the consist. Unreserved coach, reserved coach, and dome cars shall each be considered a separate "type" of car.

(4) Pipe and cigar smoking is not permitted on board trains except in private sleeping cars and in cars which have been designated as smoking areas in their entirety.

(c) Each car shall be clearly designated as smoking or nonsmoking by placards placed in conspicuous locations.

It is further ordered, That this order shall be effective August 13, 1976.

It is further ordered, That notice of this order shall be given the general public by depositing a copy thereof in the office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Commissioner Brown[1], dissenting in part, separate expression; Commissioners Murphy and Corber not participating.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-23918 Filed 8-12-76;10:58 am]

[1] Dissenting statement filed as part of the original.